

§ 719.5

§ 719.5 What contracts are not covered by this part?

This part does not cover any contract under which the Department is not responsible for directly reimbursing the contractor for legal costs, such as fixed price contracts.

§ 719.6 Are there any types of legal matters not included in the coverage of this part?

Legal matters not covered by this part include:

- (a) Matters handled by counsel retained by an insurance carrier, except under retrospective insurance in accordance with § 719.45;
- (b) Routine intellectual property law support services; and
- (c) Routine workers and unemployment compensation matters.

§ 719.7 Is there a procedure for exceptions or deviations from this part?

(a) Requests for exceptions or deviations from this part must be made in writing to Department Counsel and approved by the General Counsel. If an alternate procedure is proposed for compliance with an individual requirement in this part, that procedure must be included in the written request by the contractor. The General Counsel or his/her delegate shall provide a written response to such requests; however the response shall not require a justification of the Department's exercise of its discretion.

(b) The General Counsel may authorize exceptions or deviations requested under paragraph (a) of this section. The General Counsel may also establish exceptions to this part based on current field office and contractor practices that satisfy the purpose of these requirements.

(c) Exceptions to this part that are also a deviation from the Department of Energy Acquisition Regulation (DEAR) cost principles (see subpart D of this part) must be approved in accordance with applicable DOE procurement policy. See, e.g., DOE Acquisition Guide chapter 1.1, requiring approval by the Senior Procurement Executive of DOE or NNSA as applicable. In any event, the written request from a contractor for a deviation from a cost principle relating to this part must be

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submitted to the contracting officer, with a copy provided to Department Counsel.

§ 719.8 Does the provision of protected documents from the contractor to the Department constitute a waiver of privilege?

Contractors are required to provide detailed information about third-party claims and litigation to the Department. The Department and its contractors typically share common legal and strategic interests relating to pending or threatened litigation. The common interest between the parties is primarily rooted in the fact that the Department reimburses contractors for allowable costs incurred when litigation is threatened or initiated against contractors. However, other sources of the common interest between the Department and its contractors may include, but are not limited to, an interest in completion of the agency's important mission work and an interest in safe and efficient operation of the Department's facilities. To the extent documents associated with compliance with this part (e.g., Staffing and Resource Plans, invoices, engagement letters, settlement authority requests, and draft pleadings) are protected from disclosure to third parties because the items constitute attorney work product and/or involve attorney client communications, the contractor's provision of these items to the Department does not constitute a waiver of privilege. As long as the Department and the contractor share a common interest in the outcome of legal matters, this mutual legal interest permits the parties to share privileged material without waiving any applicable privilege.

Subpart B—Legal Management Plan, Staffing and Resource Plan and Annual Legal Budget

§ 719.10 Who must submit a Legal Management Plan?

Contractors who are parties to contracts identified under § 719.3(a) and (b) must submit a Legal Management Plan.